

HOW DO THE COURTS CREATE POPULAR LEGITIMACY?:  
THE ROLE OF ESTABLISHING THE TRUTH, PUNISHING  
JUSTLY, AND/OR ACTING THROUGH JUST PROCEDURES

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I. INTRODUCTION

When legal authorities evaluate the courts, their focus has traditionally been upon the degree to which the courts achieve two distinct objectives: establishing the truth and punishing justly. These two goals are not, of course, unrelated, since establishing the truth is often viewed as a precursor to determining just punishments. A first concern of the system is with using the courts to draw upon investigative reports and evidence presented during trials to establish the facts of the case, that is, to determine as well as possible what actually happened. These facts in turn address the second concern of the courts: justly punishing wrongdoing. Hence, establishing truth and achieving substantive justice in punishment are two goals of the courts and are central to their evaluation by legal authorities and scholars. To determine how well the courts achieve these objectives, scholars examine the frequency of erroneous verdicts<sup>1</sup> and of punishments departing from objective standards of substantive justice.<sup>2</sup>

A parallel social science literature considers the role of perceptions—about the degree to which court proceedings establish

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<sup>1</sup> See, e.g., BRANDON L. GARRETT, *CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG* 6–13 (2011).

<sup>2</sup> See, e.g., KATE STITH & JOSÉ A. CABRANES, *FEAR OF JUDGING: SENTENCING GUIDELINES IN THE FEDERAL COURTS* 104–42 (1998). Achieving substantive justice involves determining applicable laws, finding appropriate types of punishment, and applying general legal concepts, such as state of mind, reasonableness, or foreseeability to the facts determined in the case. Cf. Nicholas Faso, *Civil Disobedience in the Supreme Court: Retroactivity and the Compromise Between Formal and Substantive Justice*, 75 ALB. L. REV. 1613, 1614 (2012) (“Substantive justice . . . involves a value judgment about the content of the law and its consequences.”).

truth and deliver substantive justice—on public support for the courts.<sup>3</sup> This literature considers the views of members of the public about the frequency of inaccurate verdicts,<sup>4</sup> and the degree to which judicial punishments depart from public perceptions about substantive justice.<sup>5</sup> These public views are then typically connected to the popular legitimacy of the courts. This literature considers the influence of these issues upon public perceptions rather than evaluations of objective reality.

Two models of popular legitimacy are developed and contrasted in this analysis. Their validity is then tested using the results of a national survey of the American public. The first model links popular legitimacy to the attainment of the goals of establishing truth and punishing justly. The courts are expected to be viewed as legitimate to the degree that they achieve these objectives. This goal-based model is contrasted with a second model, one which focuses upon the perceived fairness of court procedures. The second model argues that by exercising legal authority through procedures that people see as fair, the courts gain legitimacy and popular support from the public. This model is based upon the now substantial empirical literature linking popular legitimacy to public judgments about the procedural justice of the courts.<sup>6</sup>

Beyond examining the influence of perceptions of procedural justice on popular legitimacy, this analysis will contrast two arguments about *why* procedural justice might be important in shaping popular legitimacy. The first argument is that the public views about the use of fair procedures are linked to the attainment of truth and substantive justice. From this perspective people's widely demonstrated interest in the fairness of judicial procedures supports a goal attainment perspective on popular legitimacy. People use information about the fairness of court procedures to estimate the likelihood that the courts have determined the truth and punished justly.

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<sup>3</sup> See, e.g., Michael Asimow, *Popular Culture and the Adversary System*, 40 LOY. L.A. L. REV. 653, 668–685 (2007).

<sup>4</sup> See Robert J. MacCoun & Tom R. Tyler, *The Basis of Citizens' Perceptions of the Criminal Jury: Procedural Fairness, Accuracy, and Efficiency*, 12 LAW & HUM. BEHAV. 333, 336–51 (1988).

<sup>5</sup> See, e.g., PAUL H. ROBINSON, DISTRIBUTIVE PRINCIPLES OF CRIMINAL LAW: WHO SHOULD BE PUNISHED HOW MUCH? 92–93 & n.165 (2008); PAUL H. ROBINSON & MICHAEL T. CAHILL, LAW WITHOUT JUSTICE: WHY CRIMINAL LAW DOESN'T GIVE PEOPLE WHAT THEY DESERVE 13–15 (2006).

<sup>6</sup> E.g., TOM R. TYLER, WHY PEOPLE OBEY THE LAW *passim* (2006).

An alternative model suggests that procedural justice is not influential because the public connects the use of fair procedures to the establishment of truth and/or the attainment of substantive justice. Rather, the influence of procedural justice is linked to relational mechanisms linked to the enactment of procedural justice. The relational model argues that people value the use of fair procedures because those procedures carry messages of status and inclusion which reinforce people's identification with legal institutions and authorities and support their feelings of inclusion and status in the community. This then leads to high self-worth and favorable self-esteem. When people can present their concerns to judicial authorities and feel that those authorities consider and take account of their concerns, people's identification with law and legal authorities is strengthened. This is true both when people are in court and when they think about what they think would happen if they were to go to court. This *relational* influence is distinct from the influence of goal-based judgments on popular legitimacy. In other words, it is not linked to the belief that fair procedures lead to accurate verdicts or just sentences.

In this study these two models—the goal based model and the relational model—are compared using the results of a nationally representative survey of Americans. The results of this comparison suggest substantial support for the relational perspective on popular legitimacy. To some degree court legitimacy is linked to the attainment of truth and the enactment of just punishments and using fair procedures is important because it is viewed as leading to these goals. However, the strongest effect of procedural justice is a direct influence of public views about the procedural justice of the courts upon popular court legitimacy. And further, as would be predicted by a relational model, that influence flows most strongly from the interpersonal component of procedural justice—that is, from judgments about the degree to which courts and judges are trustworthy and feel concern for members of the public—rather than being linked to how fairly the courts are seen as making decisions (i.e., to the degree to which they allow voice and exercise neutrality/impartiality in making decisions).

These findings support a relational perspective on legitimacy and hence suggest the centrality of issues of inclusion and recognition in the relationship between the public and the courts. By recognizing people and their concerns and through being viewed as including the public among those who have status in the eyes of the court,

relational links are created and strengthened. These links in turn lead to legitimacy and cooperation, since people are motivated to accept and voluntarily defer to legal authority.

In addition, the courts gain further popular legitimacy when they achieve two key public goals for the courts: determining truth and punishing justly. This study suggests that public beliefs that the courts establish truth and punish justly are both important to legitimacy. Interestingly, these two influences are separate and establishing truth does not build legitimacy because it is viewed as leading to substantive justice.<sup>7</sup> Instead, it does so separately. The results of this study suggest that public views about the degree to which the courts establish truth is the more important factor in shaping legitimacy when compared to how frequently they are viewed as sentencing justly. Further, the goals of truth and substantive justice are linked in the public mind to different aspects of fair procedures. Fair decision making is linked to delivering substantive justice; fair treatment to accuracy in verdicts.

## II. SUBSTANTIVE JUSTICE

Traditionally, treatments of popular reactions to adjudication treat just punishment as the ultimate goal of a trial, with truth being an antecedent to the pursuit of substantive justice. People have a fundamental desire to feel that there is just punishment in response to wrongdoing.<sup>8</sup> A core feature of organized groups is that they create rules and enforce those rules by punishing those who break them.<sup>9</sup> While societies differ widely in what their rules are and in how they punish those who transgress, punishment for rule breaking is central to the maintenance of social order and is found in all societies.<sup>10</sup> The nature of these punishments and when they are enacted is the central focus of the study of retributive justice, which involves the principles defining appropriate punishments for wrongdoing.<sup>11</sup>

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<sup>7</sup> For an argument that these issues are connected, see Michael Asimow, *Popular Culture and the American Adversarial Ideology*, in 7 LAW AND POPULAR CULTURE 606, 609–10 (Michael Freeman ed., 2005).

<sup>8</sup> Kevin M. Carlsmith et al., *Why Do We Punish? Deterrence and Just Deserts as Motives for Punishment*, 83 J. PERSONALITY & SOC. PSYCHOL. 284, 297 (2002).

<sup>9</sup> See Ronald J. Rychlak, *Society's Moral Right to Punish: A Further Exploration of the Denunciation Theory of Punishment*, 65 TUL. L. REV. 299, 303–05 (1990).

<sup>10</sup> See *id.*

<sup>11</sup> Kevin M. Carlsmith & John M. Darley, *Psychological Aspects of Retributive Justice*, 40 ADVANCES EXPERIMENTAL SOC. PSYCHOL. 193, 194 (2008).

It is a general characteristic of social relationships and organized groups that formal or informal rules develop that define appropriate conduct. When such rules are violated, people feel the need to punish rule violators and this motivation does not only involve those personally harmed by wrongdoing. Studies of retributive justice demonstrate that people are motivated to punish those who break rules and will incur personal costs to uphold social rules, even when they are not the victims of the rule breaking behavior.<sup>12</sup>

A beginning element in reacting to rule breaking is an effort to restore the prior material balance between people. The simplest way to do so is to right a wrong by compensating the victim(s) for harm done. When people react to rule breaking which is judged to be unintentional or without malice, and where it is possible to do so, people often endorse such an approach to righting wrongs. However, when people are viewed as having deliberately broken rules, either intentionally or because of negligence, their victims and society more generally are found to feel that some type of punishment beyond compensating victims is appropriate.<sup>13</sup> If someone hits a person, they do not just hit them back, they hit them harder, reflecting an additional punishment for rule breaking.

Studies exploring the nature of the motivation to punish often link punishment to issues of deterrence and incapacitation.<sup>14</sup> It is argued that people punish to prevent future wrongdoing.<sup>15</sup> Other studies suggest that the desire for revenge is a key issue.<sup>16</sup> Recent studies have suggested that, on the contrary, people's primary reason for punishing is to uphold societal values.<sup>17</sup> Rule breaking is viewed as a threat to those values, and appropriate punishment restores the integrity of those values. A consequence of this view is that those people whose actions and demeanor show a defiance of or disrespect for society, social values, and/or the social status of their victims are both more likely to be punished, and likely to be punished more severely. How does this desire to punish wrongdoers relate to the search for truth? In the legal system itself, truth is seen as a precursor to establishing just punishment. In the popular

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<sup>12</sup> See Carlsmith et al., *supra* note 8, at 297.

<sup>13</sup> See John M. Darley & Thane S. Pittman, *The Psychology of Compensatory and Retributive Justice*, 7 PERSONALITY & SOC. PSYCHOL. REV. 324, 327-28 (2003).

<sup>14</sup> E.g., ROBINSON, *supra* note 5, at 75-83, 110-12.

<sup>15</sup> E.g., *id.* at 75, 110-12.

<sup>16</sup> See, e.g., Carlsmith & Darley, *supra* note 11, at 197.

<sup>17</sup> See, e.g., Rychlak, *supra* note 9, at 331-32.

mind the relationship between truth and punishment is less clear.

The punishment literature suggests that appropriate punishment (i.e., punishment linked to an accurate understanding of the wrong committed) is important, but shows equally clearly that people's desire to see justice done sometimes leads to loose or even nonexistent standards of truth, leading to the punishment of scapegoats who may have at best a marginal relationship to the wrongdoing in question. More particularly, people do not always see the procedures that best attain the goals of truth and justice as being the same. Hence, feeling that justice has been done can be viewed as a distinct goal from finding truth.

The separation of justice from truth is inherent in the uncertainty associated with trials. It is unusual for fact finders to know the truth. Defendants deny guilt, and witnesses and evidence are contradictory and confusing. Hence, truth is typically uncertain. Yet decision makers must dispense punishment. Hence, justice is done in the face of uncertainty about truth. Given this fundamental point it is easy to see how standards of truth could vary depending upon the motivation to feel that substantive justice has been done because someone has been punished for a crime.

### III. PROCEDURAL JUSTICE

Recent social science research suggests that subjective judgments about the procedural justice of the courts play a central role in public evaluations of the legitimacy of the courts.<sup>18</sup> In other words, people are strongly influenced by whether or not they feel that the court system and its authorities exercise their legal authority in fair ways. The same studies further demonstrate that such popular legitimacy is important because it shapes deference to legal authorities, cooperation with and support for legal authorities, as well as everyday compliance with the law.<sup>19</sup>

While the courts have long recognized the importance of exercising legal authority through procedures that, on objective grounds, are fair,<sup>20</sup> discussions of perceived procedural fairness are more recent. The roots of the application of ideas of subjective

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<sup>18</sup> See TYLER, *supra* note 6, at 8, 105.

<sup>19</sup> See *id.* at 161.

<sup>20</sup> See D.J. GALLIGAN, DUE PROCESS AND FAIR PROCEDURES: A STUDY OF ADMINISTRATIVE PROCEDURES 204-05 (1996).

procedural justice lie in the work of Thibaut and Walker.<sup>21</sup> These authors both articulate a theory of perceived procedural justice and establish its importance through a program of experimental research. Their work has inspired a large body of research on the police, the courts, and corrections that continues to this day. That research demonstrates both the value and the viability of a new strategy for exercising judicial authority based upon a self-regulatory approach. This new strategy focuses upon building and maintaining popular legitimacy as a way of encouraging the acceptance of judicial authority, heightening deference, lowering the rate of long-term noncompliance and enhancing public willingness to cooperate with the courts in fighting crime by, for example, being a juror or a witness when the courts are prosecuting criminals.

Studies link judgments about procedural justice directly to a variety of law related behaviors, including immediate decision acceptance or rejection;<sup>22</sup> decision adherence over time;<sup>23</sup> rule

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<sup>21</sup> See JOHN THIBAUT & LAURENS WALKER, *PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS* *passim* (1975).

<sup>22</sup> See JOHN D. MCCLUSKEY, *POLICE REQUESTS FOR COMPLIANCE: COERCIVE AND PROCEDURALLY JUST TACTICS* 30 (2003); TOM R. TYLER & YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS* 55 (2002); John C. Besley, *Public Engagement and the Impact of Fairness Perceptions on Decision Favorability and Acceptance*, 32 *SCI. COMM.* 256, 257–63 (2010); Christine E.W. Bond & David John Gow, *Policing the Beat: The Experience in Toowoomba, Queensland*, in *POLICING FOR PREVENTION: REDUCING CRIME, PUBLIC INTOXICATION AND INJURY* 153, 161 (Ross Homel ed., 1997); Mengyan Dai et al., *Procedural Justice During Police-Citizen Encounters: The Effects of Process-Based Policing on Citizen Compliance and Demeanor*, 39 *J. CRIM. JUST.* 159, 159–61 (2011); E. Allan Lind et al., *Individual and Corporate Dispute Resolution: Using Procedural Fairness as a Decision Heuristic*, 38 *ADMIN. SCI. Q.* 224, 224–31 (1993); Stephen D. Mastrofski et al., *Compliance on Demand: The Public's Response to Specific Police Requests*, 33 *J. RES. CRIME & DELINQ.* 269, 269–80 (1996); Stephen D. Mastrofski et al., *Police Disrespect Toward the Public: An Encounter-Based Analysis*, 40 *CRIMINOLOGY* 519, 519–22 (2002); Kristina Murphy & Tom Tyler, *Procedural Justice and Compliance Behaviour: The Mediating Role of Emotions*, 38 *EUR. J. SOC. PSYCHOL.* 652, 652–55 (2008); Alex R. Piquero et al., *Discerning Unfairness Where Others May Not: Low Self-Control and Unfair Sanction Perceptions*, 42 *CRIMINOLOGY* 699, 699–711 (2004); Clifford Stott et al., *'Keeping the Peace': Social Identity, Procedural Justice and the Policing of Football Crowds*, 52 *BRIT. J. CRIMINOLOGY* 381, 381–83 (2012); Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 *OHIO ST. J. CRIM. L.* 231, 233–38 (2008); Jeffrey T. Ward et al., *Caught in Their Own Speed Trap: The Intersection of Speed Enforcement Policy, Police Legitimacy, and Decision Acceptance*, 14 *POLICE Q.* 251, 252–57 (2011); Amy C. Watson & Beth Angell, *The Role of Stigma and Uncertainty in Moderating the Effect of Procedural Justice on Cooperation and Resistance in Police Encounters with Persons with Mental Illnesses*, 19 *PSYCHOL. PUB. POL'Y & L.* 30, 30–33 (2013); Tom R. Tyler et al., *Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men's Legal Socialization*, 1–5 (Yale Law School, Public Working Paper No. 302, 2013), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2289244](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2289244); ROBERT J. MACCOUN ET AL., *THE INST. FOR CIVIL JUSTICE, ALTERNATIVE ADJUDICATION: AN EVALUATION OF THE NEW*

breaking behavior;<sup>24</sup> well-being and recovery;<sup>25</sup> and cooperation with the police, courts, and school officials.<sup>26</sup>

Further research demonstrates that public judgments about the legitimacy of the courts and the police are linked to the perceived procedural justice of their policies and practices. If legal authorities are believed to be exercising their authority fairly, they gain legitimacy. This basic relationship has been repeatedly confirmed in studies of interactions among the courts,<sup>27</sup> the police<sup>28</sup> and the

JERSEY AUTOMOBILE ARBITRATION PROGRAM 70–71 (1988), <http://www.rand.org/content/dam/rand/pubs/reports/2007/R3676.pdf>.

<sup>23</sup> See Robert E. Emery et al., *Child Custody Mediation and Litigation: Parents' Satisfaction and Functioning One Year After Settlement*, 62 J. CONSULTING & CLINICAL PSYCHOL. 124, 124 (1994).

<sup>24</sup> See David M. Bie, *Procedural Justice and Prison Violence: Examining Complaints Among Federal Inmates (2000–2007)*, 19 PSYCHOL. PUB. POL'Y & L. 15, 15–19 (2013); Anthony E. Bottoms, *Interpersonal Violence and Social Order in Prisons*, 26 CRIME & JUST. 205, 205–13 (1999); Michael R. Brubacher et al., *Procedural Justice in Resolving Family Disputes: Implications for Childhood Bullying*, 15 PSYCHOL. PUB. POL'Y & L. 149, 149–55 (2009); Michael D. Reisig & Gorazd Mesko, *Procedural Justice, Legitimacy, and Prisoner Misconduct*, 15 PSYCHOL. CRIME & L. 41, 41–45 (2009); Joseph R. Tatar II et al., *Perceptions of Procedural Justice Among Female Offenders: Time Does Not Heal All Wounds*, 18 PSYCHOL. PUB. POL'Y & L. 268, 268–71 (2012); Alan J. Tomkins et al., *An Experiment in the Law: Studying a Technique to Reduce Failure to Appear in Court*, 48 CT. REV. 96, 96–98 (2012); Tyler et al., *Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men's Legal Socialization*, *supra* note 22, at 8–11; Heathcote W. Wales et al., *Procedural Justice and the Mental Health Court Judge's Role in Reducing Recidivism*, 33 INT'L J. L. & PSYCHIATRY 265, 265–67 (2010); CYNTHIA G. LEE ET AL., NAT'L CTR. FOR STATE COURTS, A COMMUNITY COURT GROWS IN BROOKLYN: A COMPREHENSIVE EVALUATION OF THE RED HOOK COMMUNITY JUSTICE CENTER 1–4 (2013), <http://csgjusticecenter.org/wp-content/uploads/2013/11/A-Community-Court-Grows-in-Brooklyn.pdf>; LAWRENCE W. SHERMAN ET AL., AUSTL. FED. POLICE & AUSTL. NAT'L UNIV., EXPERIMENTS IN RESTORATIVE POLICING: A PROGRESS REPORT ON THE CANBERRA REINTEGRATIVE SHAMING EXPERIMENTS (RISE) i–iv (1998), [http://www.aic.gov.au/media\\_library/aic/rjustice/riase/progress/1998.pdf](http://www.aic.gov.au/media_library/aic/rjustice/riase/progress/1998.pdf).

<sup>25</sup> See JO-ANNE M. WEMMERS, DUTCH RESEARCH & DOCUMENTATION CTR., VICTIMS IN THE CRIMINAL JUSTICE SYSTEM 19 (1996); Sarah Kopelovich et al., *Procedural Justice in Mental Health Courts: Judicial Practices, Participant Perceptions, and Outcomes Related to Mental Health Recovery*, 36 INT'L J. L. & PSYCHIATRY 113, 113–14 (2013); Jo-Anne Wemmers, *Victims' Experiences in the Criminal Justice System and Their Recovery from Crime*, 19 INT'L REV. VICTIMOLOGY 221, 221–23 (2013).

<sup>26</sup> See Eve M. Brank et al., *Will They Tell? Weapons Reporting by Middle-School Youth*, 5 YOUTH VIOLENCE & JUV. JUST. 125, 125–26 (2007); Denise C. Gottfredson et al., *How Drug Treatment Courts Work: An Analysis of Mediators*, 44 J. RES. CRIME & DELINQ. 3, 3–11 (2007); Anne Gregory & Rhona S. Weinstein, *The Discipline Gap and African Americans: Defiance or Cooperation in the High School Classroom*, 46 J. SCH. PSYCHOL. 455, 455–59 (2008); Lindsey E. Wylie et al., *Assessing School and Student Predictors of Weapons Reporting*, 8 YOUTH VIOLENCE & JUV. JUST. 351, 351–57 (2010); Tyler & Fagan, *supra* note 22, at 262–63; Tyler et al., *supra* note 22, at 9.

<sup>27</sup> See STEPHEN SHUTE ET AL., A FAIR HEARING?: ETHNIC MINORITIES IN THE CRIMINAL COURTS 71–78 (2005); Ben Bradford, *Voice, Neutrality and Respect: Use of Victim Support Services, Procedural Fairness and Confidence in the Criminal Justice System*, 11 CRIMINOLOGY & CRIM. JUST. 345, 346, 362 (2011); Katherine M. Kitzmann & Robert E.



public. And, again, studies that directly compare the police and the courts suggest that procedural justice underlies legitimacy with both authorities.<sup>29</sup>

Legitimacy in turn is linked to desirable law related behavior. The first concern of the courts is with public acceptance of their role as the authorities responsible for maintaining order. This involves empowering the courts to manage legal problems and accepting

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Emery, *Procedural Justice and Parents' Satisfaction in a Field Study of Child Custody Dispute Resolution*, 17 LAW & HUM. BEHAV. 553, 554–63 (1993); Avishalom Tor et al., *Fairness and the Willingness to Accept Plea Bargain Offers*, 7 J. EXPERIMENTAL LEGAL STUD. 97, 109 (2010); RASHIDA ABUWALA & DONALD J. FAROLE, JR., CTR. FOR CT. INNOVATION, THE EFFECTS OF THE HARLEM HOUSING COURT ON TENANT PERCEPTIONS OF JUSTICE 15 (2008), [http://www.courtinnovation.org/sites/default/files/Harlem\\_Housing\\_Court\\_Study.pdf](http://www.courtinnovation.org/sites/default/files/Harlem_Housing_Court_Study.pdf); DONALD J. FAROLE, JR., CTR. FOR CT. INNOVATION, THE NEW YORK STATE RESIDENTS SURVEY: PUBLIC PERCEPTIONS OF NEW YORK'S COURTS 16–17 (2007), [http://www.courtinnovation.org/sites/default/files/documents/NYS\\_Residents\\_Survey.pdf](http://www.courtinnovation.org/sites/default/files/documents/NYS_Residents_Survey.pdf).

<sup>28</sup> See TYLER & HUO, *supra* note 22, at 56–57; TYLER, *supra* note 6, at 63; WEMMERS, *supra* note 25, at 198; Kimberly Belvedere et al., *Explaining Suspect Resistance in Police-Citizen Encounters*, 30 CRIM. JUST. REV. 30, 33–42 (2005); Irina Elliott et al., *Procedural Justice in Contacts with the Police: The Perspective of Victims of Crime*, 13 POLICE PRAC. & RES. 437, 438–46 (2012); Jacinta M. Gau & Rod K. Brunson, “One Question Before You Get Gone . . .”: *Consent Search Requests as a Threat to Perceived Stop Legitimacy*, 2 RACE & JUST. 250, 268 (2012); Jacinta M. Gau & Rod K. Brunson, *Procedural Justice and Order Maintenance Policing: A Study of Inner-City Young Men's Perceptions of Police Legitimacy*, 27 JUST. Q. 255, 256–57, 262–73 (2010); Badi Hasisi & David Weisburd, *Going Beyond Ascribed Identities: The Importance of Procedural Justice in Airport Security Screening in Israel*, 45 LAW & SOC'Y REV. 867, 885–86 (2011); Lyn Hinds, *Building Police-Youth Relationships: The Importance of Procedural Justice*, 7 YOUTH JUST. 195, 195–203 (2007); Lyn Hinds & Kristina Murphy, *Public Satisfaction with Police: Using Procedural Justice to Improve Police Legitimacy*, 40 AUSTRALIAN & N.Z. J. CRIMINOLOGY 27, 28–39 (2007); Lyn Hinds, *Youth, Police Legitimacy and Informal Contact*, 24 J. POLICE & CRIM. PSYCHOL. 10, 10–19 (2009); Tal Jonathan-Zamir & David Weisburd, *The Effects of Security Threats on Antecedents of Police Legitimacy: Findings from a Quasi-Experiment in Israel*, 50 J. RES. CRIME & DELINQ. 3, 4–20 (2013); Tammy Rinehart Kochel, *Can Police Legitimacy Promote Collective Efficacy?*, 29 JUST. Q. 384, 386–414 (2012); Lorraine Mazerolle et al., *Shaping Citizen Perceptions of Police Legitimacy: A Randomized Field Trial of Procedural Justice*, 51 CRIMINOLOGY 33, 40–55 (2013); Andy Myhill & Ben Bradford, *Can Police Enhance Public Confidence by Improving Quality of Service? Results from Two Surveys in England and Wales*, 22 POLICING & SOC'Y 397, 398–419 (2012); Jennifer Norman, *Seen and Not Heard: Young People's Perceptions of the Police*, 3 POLICING 364, 365–71 (2009); Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC'Y REV. 513 *passim* (2003); Ralph B. Taylor & Brian A. Lawton, *An Integrated Contextual Model of Confidence in Local Police*, 15 POLICE Q. 414 *passim* (2012); Tyler & Fagan, *supra* note 22, at 264; Tom R. Tyler & Cheryl J. Wakslak, *Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive, and Acceptance of Police Authority*, 42 CRIMINOLOGY 253 *passim* (2004); Tom R. Tyler, *Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want from the Law and Legal Institutions?*, 19 BEHAV. SCI. & L. 215 *passim* (2001); Michael D. Reisig et al., *Compliance with the Law in Slovenia: The Role of Procedural Justice and Police Legitimacy*, EUR. J. ON CRIM. POL'Y & RES. (published online 2013), <http://link.springer.com/journal/10610>.

<sup>29</sup> See TYLER & HUO, *supra* note 22, at 206–07.

their discretionary decisions about how to enforce the law. When people have disputes or conflicts with others they can either turn to the legal system, for redress, or they can engage in private vengeance. Studies show that people are more likely to defer to the courts concerning conflict management and rule enforcement if they believe the courts and the law are legitimate.<sup>30</sup> A second concern is with behavior that undermines state institutions or authorities such as riots and rebellions. Legitimacy also lessens willingness to engage in such actions.<sup>31</sup>

Further, those people who view the law as legitimate are more likely to follow the law in their everyday lives. This includes the widespread variety of laws that shape people's behavior: traffic laws, laws against stealing, regulations against buying illegal items, laws against drug use, or laws against robbery, murder and assault. In addition to the general influence of legitimacy on rule adherence, an additional concern is how people respond when they have personal interactions with the courts or the police. People can either comply with judicial decisions and directives or they can resist and avoid them.

A particular problem for legal authorities is that people change their behavior in the presence of the judge and then revert to their original behavior when they leave the courthouse, requiring the courts to deal repeatedly with the same people and problems. Studies indicate that people are both more likely to obey law and to accept decisions when they view the courts as legitimate. This includes ordinary citizens following the laws and accepting decisions related to rule breaking, disputes and misdemeanors,<sup>32</sup>

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<sup>30</sup> See Nicole E. Haas et al., *Public Support for Vigilantism, Confidence in Police and Police Responsiveness*, 24 *POLICING & SOC'Y* 224, 227–35 (2014); Jonathan Jackson et al., *Monopolizing Force? Police Legitimacy and Public Attitudes toward the Acceptability of Violence*, 19 *PSYCHOL. PUB. POL'Y & L.* 479, 479–80, 490–91 (2013); Sunshine & Tyler, *supra* note 28, at 534; Justice Tankebe, *Self-Help, Policing, and Procedural Justice: Ghanaian Vigilantism and the Rule of Law*, 43 *LAW & SOC'Y REV.* 245, 247–60 (2009); Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement*, 20 *PSYCHOL. PUB. POL'Y & L.* 78, 89 (2014).

<sup>31</sup> Ronald Fischer et al., *Support for Resistance Among Iraqi Students: An Exploratory Study*, 30 *BASIC & APPLIED SOC. PSYCHOL.* 167, 169–73 (2008); Katrin Hohl et al., *The Effect of the 2011 London Disorder on Public Opinion of Police and Attitudes Towards Crime, Disorder, and Sentencing*, 7 *POLICING* 12, 13–20 (2013); Jonathan Jackson et al., *supra* note 30, at 481, 490–91; Gary LaFree & Nancy A. Morris, *Does Legitimacy Matter?: Attitudes Toward Anti-American Violence in Egypt, Morocco, and Indonesia*, 58 *CRIME & DELINQ.* 689, 711–12 (2012); Tyler & Jackson, *supra* note 30, at 89.

<sup>32</sup> See, e.g., JONATHAN JACKSON ET AL., *JUST AUTHORITY?: TRUST IN THE POLICY IN ENGLAND AND WALES* 12 (2013); TYLER & HUO, *supra* note 22, at 107–08; TYLER, *supra* note

and criminals involved in felony level behaviors.<sup>33</sup> While the focus of these studies involves both the courts and the police, direct comparisons of these authorities suggests that the findings of research on them are similar.<sup>34</sup>

### A. What is Procedural Justice?

What elements of procedures shape the judgments that people make about the procedures' fairness? Studies suggest that members of the public have complex models of procedural justice, often considering eight or more distinct justice issues when deciding how fair they think a legal procedure is. Four issues are typically found to be important: opportunities for participation, a neutral forum, trustworthy authorities, and treatment with dignity and respect. Blader and

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6, at 57; Rebecca M. Chory-Assad & Michelle L. Paulsel, *Classroom Justice: Student Aggression and Resistance as Reactions to Perceived Unfairness*, 53 COMM. EDUC. 253, 265 (2004); Jeffrey Fagan & Tom R. Tyler, *Legal Socialization of Children and Adolescents*, 18 SOC. JUST. RES. 217, 236 (2005); Jonathan Jackson et al., *Why Do People Comply with the Law? Legitimacy and the Influence of Legal Institutions*, 52 BRIT. J. CRIMINOLOGY 1051, 1062 (2012); Margaret Levi et al., *The Reasons for Compliance with Law*, in UNDERSTANDING SOCIAL ACTION, PROMOTING HUMAN RIGHTS 70, 90 (Ryan Goodman et al., eds., 2012); Brian C. Martinson et al., *Scientists' Perceptions of Organizational Justice and Self-Reported Misbehaviors*, 1 J. EMPIRICAL RES. HUM. RES. ETHICS 51, 61 (2006); Kristina Murphy et al., *Nurturing Regulatory Compliance: Is Procedural Justice Effective when People Question the Legitimacy of the Law?*, 3 REG. & GOVERNANCE 1, 18 (2009); Kristina Murphy, *Regulating More Effectively: The Relationship between Procedural Justice, Legitimacy, and Tax Non-compliance*, 32 J.L. & SOC'Y 562, 575–76 (2005); Kristina Murphy, *The Role of Trust in Nurturing Compliance: A Study of Accused Tax Avoiders*, 28 L. & HUM. BEHAV. 187, 203–04 (2004); Reisig et al., *supra* note 28; Jennifer Stuart et al., *Procedural Justice in Family Conflict Resolution and Deviant Peer Group Involvement Among Adolescents: The Mediating Influence of Peer Conflict*, 37 J. YOUTH & ADOLESCENCE 674, 683 (2008); Sunshine & Tyler, *supra* note 28, at 535; Tyler & Jackson, *supra* note 30, at 89; Tom R. Tyler et al., *Reintegrative Shaming, Procedural Justice, and Recidivism: The Engagement of Offenders' Psychological Mechanisms in the Canberra RISE Drinking-and-Driving Experiment*, 41 LAW & SOC'Y REV. 553, 568 (2007); Marius van Dijke & Peter Verboon, *Trust in Authorities as a Boundary Condition to Procedural Fairness Effects on Tax Compliance*, 31 J. ECON. PSYCHOL. 80, 87 (2010); Michael Wenzel, *A Letter from the Tax Office: Compliance Effects of Informational and Interpersonal Justice*, 19 SOC. JUST. RES. 345, 358 (2006).

<sup>33</sup> See, e.g., RICHARD SPARKS ET AL., PRISONS AND THE PROBLEM OF ORDER 303 (1996); Jeffrey Fagan & Alex R. Piquero, *Rational Choice and Developmental Influences on Recidivism Among Adolescent Felony Offenders*, 4 J. EMPIRICAL LEGAL STUD. 715, 739–41 (2007); Robert J. Kane, *Compromised Police Legitimacy as a Predictor of Violent Crime in Structurally Disadvantaged Communities*, 43 CRIMINOLOGY 469, 490–91 (2005); Andrew V. Papachristos et al., *Attention Felons: Evaluating Project Safe Neighborhoods in Chicago*, 4 J. EMPIRICAL LEGAL STUD. 223, 236, 266 (2007); Andrew V. Papachristos et al., *Criminology: Why Do Criminals Obey the Law? The Influence of Legitimacy and Social Networks on Active Gun Offenders*, 102 J. CRIM. L. & CRIMINOLOGY 397, 412, 436 (2012); Michael D. Reisig, *Rates of Disorder in Higher-Custody State Prisons: A Comparative Analysis of Managerial Practices*, 44 CRIME & DELINQUENCY 229, 230, 232, 239 (1998); Reisig & Mesko, *supra* note 24, at 55.

<sup>34</sup> TYLER & HUO, *supra* note 22, at 175; Tyler & Jackson, *supra* note 30, at 89.

Tyler refer to the first two elements as involving the quality of decision making, while the latter two elements are concerned with the quality of interpersonal treatment.<sup>35</sup>

First, people want to participate in decisions about the resolution of problems or the application of rules. When dealing with authorities this typically means that people want to have an opportunity to explain their situation or tell their side of the story before decisions are made and outcomes determined. This opportunity to make arguments and present evidence should occur before the police or judges make decisions about what to do. People are interested in having an opportunity to tell their story, that is, they want to have a voice.

Second, people react to evidence that the authorities with whom they are dealing are neutral. This requires an explanation for the process and accountability in terms of the rules used to make decisions. Neutrality involves authorities making decisions based upon consistently applied legal principles and the facts of the case, not personal opinions and biases. Transparency or openness about what the rules and procedures are and how decisions are being made facilitates the belief that decision making procedures are neutral when it reveals that decisions are being made in rule based and unbiased ways. If, for example, the police have a policy of stops to search cars for guns, they explain to the people they stop what that policy is and the reasons the police have adopted it. When judges apply the law and make decisions, they explain what laws are being used and how they apply.

Third, people want to have their status as human beings and members of the political community acknowledged. Since quality of treatment is a statement about status, people are sensitive to whether they are treated with dignity and politeness, and to whether their rights as members of the community are respected. The issue of interpersonal treatment consistently emerges as a key factor in reactions to dealings with legal authorities. People believe that they are entitled to treatment with respect and react very negatively to dismissive or demeaning interpersonal treatment.

Finally, people focus on cues that communicate information about the intentions and character of the legal authorities with whom

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<sup>35</sup> Steven L. Blader & Tom R. Tyler, *A Four-Component Model of Procedural Justice: Defining the Meaning of a "Fair" Process*, 29 PERS. & SOC. PSYCHOL. BULL. 747, 748, 757 (2003).

they are dealing. This involves inferences of integrity, trustworthiness, and good faith. People react favorably to the judgment that the authorities with whom they are interacting are benevolent and caring, and are sincerely trying to do what is best for the people with whom they are dealing. Authorities communicate this type of concern when they listen to people's accounts and explain or justify their actions in ways that show an awareness of and sensitivity to people's needs and concerns. In discussions about whether or not to accept a directive from a legal authority each of these concerns is typically more important in decisions than are assessments of the fairness or favorability of the decision itself.<sup>36</sup>

Of these four elements, the first two—giving people voice and using neutral rules when making decisions—have been associated with attaining the goal of substantive justice. Allowing voice and making rule based impartial decisions lead to appropriate findings of fact and encourage punishing justly. The latter two elements, respect and trust, are relational issues and have been associated with the influence of procedures upon the social connection between people and authorities.<sup>37</sup> They reflect the influence of court proceedings upon understandings of inclusion and status, and hence directly speak to the potential of wrongdoing to injure the status of victims or others in society.

#### IV. TRUTH AND SUBSTANTIVE JUSTICE

How do procedural justice findings relate to establishing the truth and enacting substantive justice in punishment for wrongdoing? Procedural justice findings suggest that using fair procedures benefits legal authorities in a variety of ways. However, procedural justice research has not generally addressed the degree to which it is important to the public to believe that the courts reach accurate verdicts and/or punish offenders appropriately. It is not clear whether procedures matter because people think that the use of fair procedures enhances the likelihood of achieving these objectives. While procedural justice assessments concern evaluations of how

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<sup>36</sup> TYLER & HUO, *supra* note 22, at 90.

<sup>37</sup> TOM R. TYLER & STEVEN L. BLADER, COOPERATION IN GROUPS: PROCEDURAL JUSTICE, SOCIAL IDENTITY, AND BEHAVIORAL ENGAGEMENT 89–90 (2000); Tom R. Tyler & Steven L. Blader, *The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior*, 7 PERSONALITY & SOC. PSYCHOL. REV. 349, 351–52 (2003).

the court exercises authority they are not necessarily linked to either the accuracy of verdicts or the appropriateness of punishments.

There are two issues underlying this question. The first is whether the pursuit of truth and enactment of substantive justice are viewed by people as the same, that is, is attaining truth related to the substantive justice of punishments? The second is whether either of these issues is connected by the public to evaluations of the procedural fairness of the courts and through such judgments to evaluations about court legitimacy.

#### *A. Truth and Justice: The Same?*

As has been noted, it would be natural to assume that people value fair procedures because they view them as leading to accurate verdicts and/or to the appropriate punishment of wrongdoing. This assumption guides at least some of the early procedural justice research of Thibaut and Walker on adversarial versus inquisitorial trial procedures.<sup>38</sup> Thibaut and Walker argue that the adversarial system is more likely to produce truth and lead to justice.<sup>39</sup> It is also the system most likely to be viewed by litigants as procedurally just and by implication legitimate.<sup>40</sup>

In their studies, Thibaut and Walker first demonstrate that the effects of prior bias on verdicts are better eliminated by the adversarial procedure.<sup>41</sup> In experiments they first create pre-trial bias and then conduct an adversarial or inquisitorial trial concerning a particular case.<sup>42</sup> They find that the influence of prior bias upon post-trial verdicts is less when the trial is adversarial.<sup>43</sup> Based upon this finding they suggest that the use of adversary procedures is associated with actual accuracy, as well as flowing from the trial procedure that people evaluate as being the fairest, which is also the adversary system.<sup>44</sup>

While this argument would initially seem reasonable, it is itself inconsistent with another aspect of Thibaut and Walker's research findings. In a different experimental framework they show that the

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<sup>38</sup> See THIBAUT & WALKER, *supra* note 21, at 39–40.

<sup>39</sup> See *id.* at 119.

<sup>40</sup> See *id.* at 77.

<sup>41</sup> See *id.* at 49.

<sup>42</sup> See *id.* at 42–45.

<sup>43</sup> See *id.* at 49.

<sup>44</sup> See *id.* at 118.

adversarial system leads to a distribution in the presentation of facts in a trial that does not accurately reflect the totality of the facts in the underlying case. In particular they demonstrate that the proportion of evidence presented at a trial favors the disadvantaged party under the adversarial model, while under the inquisitorial model the evidence presented accurately mirrors the “true” nature of the actual evidence.<sup>45</sup> Although Thibaut and Walker present this feature of the adversarial model as desirable, it also indicates that the model is not associated with attaining truth, if truth flows from having the underlying mix of the “true” evidence accurately presented during the trial. In this situation, therefore the same “fair” adversarial procedure is potentially associated with inaccuracy.

The model articulated by Thibaut and Walker additionally suggests that the adversarial system is the most likely to deliver just punishments.<sup>46</sup> While this aspect in their model is not tested empirically, their theoretical model suggests that adversarial procedures are viewed by people as fairer in part because they increase the likelihood that the decision maker will make an appropriate substantive decision, that is, will punish appropriately. According to their model, the litigant’s goal in a trial is to provide evidence to the decision maker in an effort to shape his/her verdict, not to win, but to see that that verdict represents a fair outcome (“distributive” or “substantive” justice).<sup>47</sup> The adversarial trial provides the best chance to do that because the litigant controls the presentation of evidence. Because they are provided more of an opportunity to communicate evidence to the decision maker in their own way, litigants are more likely to be able to present the evidence that is important, leading to a greater likelihood of a just verdict.

Since Thibaut and Walker argue that adversary procedures lead to truth and produce substantive justice in terms of punishment, the goals of attaining truth and realizing substantive justice are aligned and result from the same procedural choice. Of course, as has been noted, the issue of which procedure attains truth is more complex in the Thibaut and Walker paradigm than they acknowledge, but in the authors’ own terms truth and justice are aligned and can be pursued using the same procedure. Moreover,

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<sup>45</sup> See *id.* at 40.

<sup>46</sup> *Id.* at 118.

<sup>47</sup> See *id.*

that procedure is viewed as procedurally fair by the people involved.

The findings of research by Austin and Tobiasen suggest a less clear connection between accuracy and perceived fairness, however.<sup>48</sup> These authors found that people associate different legal procedures with the goals of accuracy and justice. They believe that the adversarial system is most likely to lead to justice, the inquisitorial system to truth. Having made this distinction, people then indicate a preference for the adversarial system and, apparently, for substantive justice over truth.

In their later work on science courts, Thibaut and Walker adopt a posture that is consistent with these findings.<sup>49</sup> They suggest that the courts adopt a two-stage procedure for resolving science disputes.<sup>50</sup> In stage one the courts would use an inquisitorial procedure to achieve truth. In stage two, subsequent to and based upon stage one facts, the courts would bring the facts into an adversarial trial to achieve justice in the courts' decisions.<sup>51</sup>

This conception of science courts receives support in the work of Sevier,<sup>52</sup> who found that the American "adversarial" model of resolving legal disputes—in which a person involved in litigation hires her own attorney to advocate for her in front of a judge or jury—is perceived by American litigants as providing more justice than it does accuracy, whereas the "inquisitorial" model of resolving legal disputes, favored by foreign countries—in which attorneys have little control over the flow of evidence and are not hired as biased advocates by the litigants—is perceived by litigants as more accurate than it is just.<sup>53</sup>

Taken as a whole these various studies suggest that it is difficult to make a clear statement about the relationship among preference for a judicial procedure (adversarial or inquisitorial); public views about the fairness of that procedure; public judgments about the likelihood that a particular procedure will achieve truth; and public evaluations of the likelihood that a particular procedure will lead to

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<sup>48</sup> William Austin & Joyce M. Tobiasen, *Legal Justice and the Psychology of Conflict Resolution*, in *THE SENSE OF INJUSTICE: SOCIAL PSYCHOLOGICAL PERSPECTIVES* 227, 251–52 (Robert Folger ed., 1984).

<sup>49</sup> John Thibaut & Laurens Walker, *A Theory of Procedure*, 66 CAL. L. REV. 541, 563 (1978).

<sup>50</sup> *Id.* at 563–65.

<sup>51</sup> *Id.* at 563 & n.68.

<sup>52</sup> Justin Sevier, *The Truth-Justice Tradeoff: Perceptions of Decisional Accuracy and Procedural Justice in Adversarial and Inquisitorial Legal Systems*, 20 PSYCHOL. PUB. POL'Y & L. 212, 220 (2014).

<sup>53</sup> *See id.* at 220.



appropriate punishments (substantive justice). In particular, these studies do not explore whether the impact of using procedures that people view as fair upon legitimacy occurs because the public thinks either that such fair procedures are more likely to produce truth or that they are more likely to produce substantive justice or for both reasons.

### *B. Procedural Justice and Court Legitimacy*

This paper compares the two models outlined, models which differently describe the connection among procedural justice, truth, and substantive justice as well as their joint connection to court legitimacy. The first model is drawn from Thibaut and Walker and suggests that the impact of procedural justice upon legitimacy occurs because the public believes that fairer procedures are more likely to produce truth and lead to substantive justice. A second model also views procedural justice as important to legitimacy but not because it is related to either the ability of the courts to determine truth or to produce substantive justice. Instead, the value of fair procedures is linked to the relational mechanisms of procedural justice that underlie at least some procedural justice influences.

## V. RELATIONAL PERSPECTIVES ON PROCEDURAL JUSTICE

Procedural justice is potentially valuable to the success of authorities because it relies upon relational mechanisms. In other words, its influence is not only related to showing people that accepting judicial authority is good because it leads to higher quality outcomes. To an extent, fair procedures matter in the public calculus because they are associated with truth and substantive justice, producing a goal-linked influence.

Fair procedures are also influential for relational reasons. When people are treated fairly by authorities they develop a social connection with them, identifying with the authority and viewing the authority as sharing their goals and values. These non-outcome based connections have been labeled relational bonds and shown to be a basis for the voluntary acceptance of regulation leading to enforcement through self-regulation.<sup>54</sup> The relational approach to

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<sup>54</sup> See IAN AYRES & JOHN BRAITHWAITE, *RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE* 27 (1992).

regulation is based upon a psychological model—the relational model<sup>55</sup>—that explains why these elements are effective. Relational bonds can be created through personal interactions or via general judgments about the nature of authorities and institutions.

From a motivational point of view relational mechanisms are especially important when it is difficult to effectively build legitimacy by producing desired outcomes. Courts are such a setting since a judge can seldom provide all the parties with what they want or feel they deserve. Instead, they sometimes have to deny claims or refuse judgments. Building adherence through procedural justice principles is particularly useful in such situations, that is, settings in which outcome based approaches have been proven insufficient or unfeasible. When people cannot receive desired outcomes relational mechanisms are vital since they anchor adherence to a judicial decision, to the type of the relationship people have with judicial authorities and not to their pursuit of desired outcomes. The relational elements of fair procedures direct attention toward those elements of a procedure that can be experienced by everyone and in conjunction with winning or losing: respect from authorities and evidence that authorities are sincere, benevolent and concerned (i.e., trustworthy). Procedural justice is hence effective in legal settings through its relational capacity to affirm the social connection between individuals and authorities and thereby motivate the person to act based upon identity related motivations, making their evaluation of their outcome secondary to their acceptance decision.

The advantage of bringing disputes to the courts is that judicial authorities are more neutral and disinterested. So they can more effectively overcome the problems of self-interested motivation that make it difficult for the parties involved in a dispute to implement distributive justice rules and create acceptable agreements or for those who feel wronged to determine appropriate punishments. Judges are also less emotionally involved and can make better decisions about suitable resolutions to disputes and punishments for rule breaking.

A neutral authority can establish the principles defining a fair sentence. And having a clear standard of right and wrong articulated by an authority encourages the parties to accept this

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<sup>55</sup> Tom R. Tyler & E. Allan Lind, *A Relational Model of Authority in Groups*, 25 ADVANCES EXPERIMENTAL SOC. PSYCHOL. 115, 139–43 (1992).

punishment. This is true of the perpetrator, the victim, and the community. Hence, having a third party authority facilitate a socially superior form of resolution to that which occurs when private parties seek vengeance—that is, establishment of judicially appropriate punishment—is less likely to create bad feeling and undermine long-term relationships. People are also less likely to act upon extralegal motivations of retaliation and revenge when a legitimate authority is telling them in a clear manner what a fair punishment is.

Why is it better for the parties not to act on self-serving motivations but to accept the decisions made by a judge? While acting on one's personal views about a dispute and engaging in vengeance may be psychologically satisfying to one party it undermines social relationships because it leaves an aggrieved victim of that revenge, who has family and friends of their own, even if it is comforting to the original victim. Society favors just punishment as a way to create closure, so the ability of authorities to encourage it is desirable. Private actions are also undertaken in the "heat of the moment" when the truth is still unclear, and they may not reflect a reasonable level of punishment. Actions taken in the heat of the moment are often excessive and result in a motivation to take counteraction, which leads to a cycle of violence.

Further, judges can also use their expertise and experience to craft just punishments that are more complex and effective than what parties might develop themselves. These decisions can be better informed and more thoughtful. Studies suggest that judges do in fact use their positions to make more complex decisions than lay parties.<sup>56</sup> Hence, it is not surprising that one commonly chosen approach that groups adopt to determine "fair" approaches to punishment is to bring their dispute to a court and then let the judge or other expert decide. This provides a mechanism through which justice principles can operate in complex situations.<sup>57</sup>

Consider the recent example of the efforts of Kenneth Feinberg to allocate resources to the families of the victims of the 9/11 terrorist attacks; or the people living in the Gulf, whose lives were damaged by the BP oil spill; or the bankers whose compensation was partially controlled by the government. In each case an expert developed a

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<sup>56</sup> See Tom R. Tyler & Peter Degoey, *Collective Restraint in Social Dilemmas: Procedural Justice and Social Identification Effects on Support for Authorities*, 69 J. PERSONALITY & SOC. PSYCHOL. 482, 483–84 (1995).

<sup>57</sup> See *id.* at 484–95.

complex application of distributive justice rules to determine the best compensation for those wronged.<sup>58</sup>

Judicial authorities are valuable as the disinterested and knowledgeable adjudicators of wrongdoing. They can help to resolve the problems that occur when interested parties try to implement rules of fairness in the face of victimization. However, the introduction of judicial authorities raises the issue of whether and when people will actually defer to those authorities and view their decisions as appropriate, right, and proper. Having empowered authorities, people have to decide when to view their decisions as legitimate and accept them. The flip side of judicial discretion is the possibility of public mistrust. Discretion based differentiations in sentences for similar crimes, for example, carry the risk of undermining trust and confidence in authorities, especially when people suspect the motives that lead to differences in punishment across individuals. Authorities, in other words, have to compellingly explain and justify varying sentences based upon the circumstances of the crime or criminal.

If our concern is with the legitimacy of the courts and their ability to gain acceptance for more of the complex decisions that they can provide, the focus should be on the procedural justice of formal and informal legal procedures because, as noted, studies suggest that people give legitimacy to authorities when they believe that they are exercising their authority fairly. This provides an important indication about how authorities can gain acceptance: they can provide evidence that they are using fair procedures. And while procedural justice involves elements of both fair decision making and elements of fair interpersonal treatment, it is the quality of treatment which is relational in nature that is especially important from the point of view of facilitating cooperation.<sup>59</sup>

The goal-based model emphasizes that fair decision making leads to higher quality decisions and for this reason may facilitate decision acceptance. People are more likely to think that truth is frequently established and substantive justice often achieved, so they are more likely to support the courts. If, for example, the authority can determine a fair verdict (truth) and establish appropriate punishment (substantive justice), the parties are more

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<sup>58</sup> KENNETH R. FEINBERG, WHAT IS LIFE WORTH? THE UNPRECEDENTED EFFORT TO COMPENSATE THE VICTIMS OF 9/11, at 151–57 (2005).

<sup>59</sup> See Tyler & Lind, *supra* note 55, at 165.

willing to accept their decisions, and if the public thinks the courts have these properties they are more likely to defer to the courts, allowing them to determine fair punishments. In this case, decisions are accepted because judicial decisions are understood to be reasonable in that truth has been established and justice achieved.

The other key to success however, is relational: people are willing to defer to the solutions judicial authorities propose in part because the authority acts in ways that validate the parties by showing respect for their status and standing in the group, displaying concern for and consideration of their views, and expressing a desire to do what is right for the people with whom they are dealing. People therefore feel that the authority is trustworthy, sincere, and benevolently motivated.<sup>60</sup> Relational elements are distinct from the nature and quality of the decision itself and are a separate aspect of procedural justice related to the parties' social link with the authority. For example, Hollander-Blumoff and Tyler found gains in the willingness to accept negotiated outcomes that are linked to the fairness of the negotiation process even though the outcomes themselves are not materially better.<sup>61</sup>

The relational element is especially important from the perspective of society because it enhances the acceptance of the authorities' decisions and thereby facilitates cooperation. When a person cannot receive the outcome they want concerning punishment of a wrongdoer, they can still feel validated by the authority in relational terms and this relational basis for exercising authority is therefore a mechanism that can enhance the level of cooperation and acceptance when judges face difficult decisions and cannot give one or both parties outcomes that they will view as appropriate.

When people have a social link with an authority, the justice of the procedures the authority uses become the key issue they consider when deciding whether or not to accept the decisions of that authority. Such a link can be at the individual level, for example the connection a person feels with a judge or mediator, and it can be more institutional, with people identifying with institutions because of their legitimacy. When people lack such a

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<sup>60</sup> See TYLER & HUO, *supra* note 22, at 7.

<sup>61</sup> See Rebecca Hollander-Blumoff & Tom R. Tyler, *Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential*, 33 LAW & SOC. INQUIRY 473, 491 (2008).

relationship they focus on whether they agree with a third-party decision. Within people's procedural justice evaluations, relational issues in particular are more central.

The stronger the social links between a party and an authority the more the party's behavior in relationship to that authority is shaped by relational as opposed to outcome based issues. Consequently, part of being an effective authority, judicial or otherwise, is being able to draw upon social bonds with the parties who deal with the courts, as well as with the public that observes or reads about the courts. These are not necessarily personal connections but reflect identification on the part of the parties with the role and institution represented by the judge, the courts, and the law.

To summarize, relationally based procedural justice is valuable because it provides a basis for authorities to gain acceptance for their decisions as well as a mechanism for building institutional legitimacy. Authorities are neutral and have expertise. They can use these characteristics to craft more complex justice-based solutions. But, will those solutions be accepted? The authorities have to balance their ability to make more complex applications of justice rules using their discretionary authority against being able to get acceptance for their decisions both among the parties involved and people more generally.

How do authorities use justice to legitimate more complex decisions among all the parties to an interaction? Decisions that depart from commonsense justice, even if they are more complex and reflect expertise and experience, are initially likely to be viewed as unfair by the parties. Studies suggest that the parties defer to such decisions when they perceive that the authority is acting with the intention of achieving justice—for example, a relational concern.<sup>62</sup> In other words, the key to effectiveness is that people have trust in the motives and sincerity of the authority. Authorities can depart from commonly understood principles of justice when people support them for relational reasons.

How do authorities communicate trustworthiness and create trust? Two ways are, first, by explaining what the procedures they are using are and why they are making the decisions they do and, second, by acknowledging people's needs and concerns in those

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<sup>62</sup> Tom R. Tyler, *What Is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 LAW & SOC. REV. 103, 129 (1988).

explanations. To do so it is first important to let people present their concerns and evidence they feel is relevant so that these can both be used in making a decision and in justifying it.

Hence, the study of justice in the context of authorities needs to consider how authorities make their decisions legitimate to all the parties to a conflict so that they accept them. And of particular concern in this analysis, does legitimation involve issues of truth and substantive justice or do relational effects occur outside of any connection between viewing the courts as using fair procedures, thinking that they do determine the truth and do punish justly, and viewing them as legitimate institutions.

Thibaut & Walker argue that a benefit of providing voice is that it enables authorities to arrive at substantively fair solutions.<sup>63</sup> However, their work does not show that it is because people think that solutions reached through fair procedures are substantively fairer that they accept them. In their studies, Thibaut and Walker do not link the perceived substantive fairness of third-party decisions to their legitimacy and acceptance. Hence, there is a need to distinguish the issue of producing fair sentences from that of engaging relational mechanisms and to consider the role of both mechanisms in producing legitimacy.

These issues are important because they focus on the potential benefits that accrue from having trained and experienced authorities who can craft high quality solutions. The ability of experts to gain deference because of the quality of their decisions is different from their ability to gain acceptance for decisions via relational mechanisms. However both are relevant to the benefits derived from creating and empowering authorities. Americans, in particular, have a love-hate relationship with experts and expertise and often seem to feel that the views of the “average person on the street” are the best basis for action.

## VI. THE PRESENT STUDY

The focus of concern in this study is popular legitimacy. Drawing upon the literature on legitimacy, this study operationalized popular legitimacy in terms of four elements: the perceived obligation to obey the courts; trust and confidence in the courts; judgments about whether the courts follow the law; and the belief

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<sup>63</sup> See THIBAUT & WALKER, *supra* note 21, at 118.

that legal authorities have the same normative values as the public. The study also measured legitimacy in terms of two behaviors: the willingness to testify in trials and the willingness to forego private vengeance.

This analysis examines the relationship between public judgments about the degree to which the courts establish truth, the frequency with which judicial decisions reflect substantive justice in terms of punishment, the fairness of court procedures, and the legitimacy of the courts. Those relationships are explored among a random sample of Americans.

### *A. Sample Characteristics*

Participants for this study were drawn from a panel of compensated respondents maintained by Knowledge Networks during August and September 2012.<sup>64</sup> Individuals in the panel were offered the opportunity to complete this survey as part of their long-term commitment to the organization. The research panel comprised a probability sample of U.S. residents that was acquired through random digit dialling and address-based sampling methodologies of online and offline adults over the age of eighteen. Selected respondents were contacted by e-mail and provided with a laptop computer and internet access if needed. For this survey 2561 respondents randomly chosen from the larger ongoing panel of residents of the United States maintained by Knowledge Networks were invited to take part in the survey and reminded after three days.<sup>65</sup> Of those who might participate, 1603 individuals completed the survey either in English or in Spanish, which represented a 62.5% response rate.

The sample was 48% male. Twenty-one percent of respondents were twenty-nine years of age or younger; 26% of respondents were between thirty and forty-four years old; 28% of respondents were between forty-five and fifty years old; and 26% respondents of were sixty years of age or older. In terms of education, 30% of the sample had completed some high school or had a high school degree; 29% of respondents had completed some college; and 29% of respondents

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<sup>64</sup> Knowledge Networks is a survey research firm, which maintains a panel of respondents who complete online questionnaires for compensation. The panel is designed, with appropriate weighting, to approximate the demographics of the American population. See *KnowledgePanel Design Summary*, GFK, 2, <http://goo.gl/qhHs2d> (last visited Mar. 23, 2014).

<sup>65</sup> This number was chosen to produce an adequate number of completed questionnaires.



were college graduates or had received additional education. In terms of income, 36% of responses had an annual family income below \$40,000; 33% of the sample had an annual family income between \$40,000 and \$84,000; and 31% of the sample had an annual family income \$85,000 or more. The sample was 6% Hispanic; 12% African American; 72% White; and 10% other ethnicity. Finally, 41% of the sample participants were Republican; 55% were Democratic; and 4% were undecided.

The panel sample is designed to approximate a national sample and the responses received were weighted to adjust for deviations from a representative national sample.<sup>66</sup> This adjustment involved weighting respondents' questionnaires based upon their demographic characteristics including gender, age, ethnicity, education, income, region, and primary language. The weighted sample, which consisted of 1603 participants, should therefore approximate a representative sample of American adults.<sup>67</sup>

Each of the participants in the study answered a series of questions about the courts presented to them on a series of computer screens. Participants were allowed to complete the survey in multiple sessions, but could not return to previous questions in the questionnaire.

### *B. Participants' Responses*

We now report the data that we collected from our participants. The sections that follow list each of the questions that we asked to our participants and are organized by topic. Participants were asked their views about (1) certain characteristics of the courts; (2) their attitudes toward the courts; and (3) their behavior with respect to the courts.

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<sup>66</sup> The comparison data is drawn from the Current Population Survey, with Hispanic data drawn from the 2010 PEW Hispanic Center Survey. See generally *Current Population Survey (CPS)*, U.S. CENSUS BUREAU, <https://www.census.gov/hhes/www/cpstables/032013/perinc/toc.htm> (last visited Mar. 23, 2013) (compiling and making available for download the 2012 CPS data sets); PEW RESEARCH CENTER, *HISPANIC TRENDS PROJECT 2010* (Feb. 21, 2010), [http://www.pewhispanic.org/files/2012/02/PHC-2010-FB-Profile-Final\\_APR-3.pdf](http://www.pewhispanic.org/files/2012/02/PHC-2010-FB-Profile-Final_APR-3.pdf) (compiling data from the 2010 Pew Hispanic Center Survey).

<sup>67</sup> A comparison of the sample to 2012 Current Population demographics indicated no significant deviations. See *Current Population Survey*, *supra* note 66. For example, in 2012 the U.S. population was 72% White, and our survey panel was 72% White; the U.S. population was 51% female, as was the sample; and, in 2010, 37% of the US population was age eighteen to forty-four, as was the sample. *Id.*

## 1. Characteristics of Courts

We asked our participants several questions relevant to their perceptions of certain characteristics of American courts: (1) the procedural justice produced by the courts; (2) the frequency with which the courts arrive at correct, true verdicts; and (3) the substantive justice produced by the courts.

### *a. The Procedural Justice of the Courts*

The first of the characteristics of American courts—the amount of procedural justice that they produce—can be conceived of in terms of their decision making and in terms of the fairness of their interactional treatment of litigants. We asked participants questions regarding both of these conceptions of procedural justice.

#### i. Procedural Justice in Terms of Decision-Making

Participants answered the following four questions using a four-point scale, anchored at “never” and “always.” The first question measured the psychological construct of voice, whereas the remaining questions measured participants’ perceptions of neutrality. They were asked how often the courts: (1) “Give people a chance to tell their side of the story before they decide what to do”; (2) “Make fair and impartial decisions in the cases they deal with”; (3) “Explain their decisions and actions in ways that people can understand”; and (4) “Make decisions based upon the law and not their personal biases or opinions.”<sup>68</sup>

#### ii. Procedural Justice in Terms of the Fairness of Treatment by the Courts

Participants answered these questions using a four-point scale (from “never” to “always”). The first two questions measured participants’ perceptions of the amount of respect they had received and the final two questions measured the degree of trust they have

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<sup>68</sup> Participants’ responses to these items were strongly correlated. This correlation is measured through a “Cronbach’s alpha” statistic, in which a value of 1.0 indicates a perfect correlation between responses. See ROBERT M. LAWLESS ET AL., *EMPIRICAL METHODS IN LAW* 299 (2010); Karl Schweizer, *On the Changing Role of Cronbach’s  $\alpha$  in the Evaluation of the Quality of a Measure*, 27 EUR. J. PSYCH. ASSESSMENT 143, 143–44 (2011). The Cronbach’s alpha value for these four items was .84.

in the courts. The questions specifically asked how often the courts: (1) "Treat people with dignity and respect"; (2) "Respect people's rights"; (3) "Try to do what is best for the people they are dealing with"; and (4) "Make decisions that are good for everyone in the community."<sup>69</sup>

*b. Frequency with which the Courts Reach Accurate Verdicts (Truth)*

Participants answered two questions on the same four-point scale used above. The questions asked how often the courts: (1) "Make mistakes and let guilty people go free?"; and (2) "Make mistakes and convict innocent people?"<sup>70</sup>

*c. Frequency with which the Courts Sentence Appropriately (Substantive Justice)*

Participants were asked five questions on a four-point scale anchored at "disagree" and "agree." (1) "People who break the law should be given harsher sentences than they currently receive"; (2) "I support the death penalty for serious crimes"; (3) "The use of harsh punishments should be avoided as much as possible"; (4) "If prison is used it should be used sparingly and as a last resort"; (5) "Whenever possible we should use community service as an alternative to prison."<sup>71</sup>

## 2. Court Related Attitudes

We measured our participants' attitudes toward the courts with respect to how legitimate they perceive those courts to be. Legitimacy is a multidimensional psychological construct and so we measured it as outlined below.

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<sup>69</sup> The Cronbach's alpha value for these items was .94, indicating that they were highly correlated.

<sup>70</sup> The Cronbach's alpha value for these items was .81, indicating that they were highly correlated.

<sup>71</sup> The Cronbach's alpha value for these items was .73, indicating that they were highly correlated. Additionally, items three and four were "reverse scored," whereby the values associated with moving from "disagree" to "agree" in coding each participants' responses were reversed to account for the fact that the items were "negatively worded" questions. The Cronbach's alpha value reflects the association among these items after items two, three, and four were reverse coded. See LAWLESS ET AL., *supra* note 68, at 299.

*a. Legitimacy of the Courts*

The analysis in this section treats legitimacy as a general summary index that averages participants' responses to questions regarding (1) their sense of obligation to obey the courts; (2) their trust and confidence in the courts; and (3) normative alignment, which we measured by examining participants' perceptions of whether the courts follow the law and whether they share the public's values.

i. Legitimacy: Obligation to Obey the Courts

Participants were asked the extent to which: (1) "You should support the decisions made by judges even when you disagree with them"; (2) "You should do what judges tell you even if you do not understand or agree with the reasons"; (3) "You should do what judges tell you even if you do not like how they treat you"; and (4) "The courts in your community are legitimate authorities and you should obey them."<sup>72</sup>

ii. Legitimacy: Trust and Confidence in the Courts

Respondents were asked the extent to which they agreed or disagreed that: (1) "The courts protect the interests of the rich and powerful above those of ordinary people"; (2) "The courts are unduly influenced by pressure from political parties and politicians"; (3) "Judges take bribes"; (4) "Judges put people in jail for no good reason"; (5) "Judges make decisions based upon their prejudices or personal opinions"; and (6) "When judges make decisions they almost always behave according to the law."<sup>73</sup>

iii. Normative Alignment

*Do the courts follow the law?* Participants were asked the extent to which they agreed or disagreed with the following statement: "When judges make decisions they almost always behave according to the law."

*Do the courts share public values?* Participants were asked the

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<sup>72</sup> The Cronbach's alpha value for these items was .83, indicating that they were highly correlated.

<sup>73</sup> The Cronbach's alpha value for these items was .82, indicating that they were highly correlated. Items one, two, three, four and five were reverse scored.

extent to which they agreed or disagreed with two statements: (1) "Judges stand up for the values that are important to you"; and (2) "Judges generally have the same sense of right and wrong that you do."<sup>74</sup>

### 3. Court Related Behavior

We measured participants' reports of their behaviors with respect to the courts by asking them (1) the degree to which they would help legal actors; (2) the degree to which they would take actions "outside the law"; and (3) several questions regarding their actual experiences with the law, if applicable.

#### *a. Help the Legal System*

On a four-point scale ranging from "very unlikely" to "very likely," participants were asked: (1) "If you saw someone push a person to the ground and steal their purse or wallet, how likely would you be to call the police?"; (2) "If you were the only witness, how willing would you be to identify the person who committed the crime?"; and (3) "If you were the only witness, how likely would you give evidence in court against the accused?"<sup>75</sup>

#### *b. Violence as Revenge and Protest*

On a four-point scale ranging from "very wrong" to "not wrong at all," participants were asked how wrong it was to take actions outside the law, specifically the appropriateness of using violence to: (1) "Take revenge against someone who has insulted or injured you"; (2) "Resolve a dispute with a neighbor"; (3) "Protest against laws or policies that you think are unjust"; (4) "Write or distribute leaflets encouraging violence against people of different ethnic groups"; (5) "Use violence to protest against economic policies"; and (6) "Use violence to promote a particular religion or religious cause."<sup>76</sup>

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<sup>74</sup> The Cronbach's alpha value for these items was .88, indicating that they were highly correlated.

<sup>75</sup> The Cronbach's alpha value for these items was .93, indicating that they were highly correlated.

<sup>76</sup> The Cronbach's alpha value for these items was .85, indicating that they were highly correlated.

*c. Personal Experience with the Courts*

To determine whether participants had any personal experiences with the courts over the past two years, we asked them: (1) "Have you been a defendant in a court case in which you were accused of a crime?"; (2) "Have you been in court because you were a victim of or witnessed a crime?"; and (3) "Have you been in court because you went to get help resolving a conflict or to collect money you felt another person owed you?" Six percent of respondents responded yes to the first question, and 3% of respondents responded yes to the second question and to the third question. These participants were then asked additional questions regarding the justice of the decision-making in their case, the fairness of the way the court treated them, and the perceived lawfulness of the outcome.

i. Justice of Decision Making

Here, participants were asked, on a five-point scale ranging from "very unfairly" to "very fairly": "How fairly did the court make decisions about what to do?"

ii. Fairness of Interpersonal Treatment

On the same scale, participants were also asked: "How fairly were you treated by the court?"

iii. Lawfulness of Outcome

Finally, on a five-point scale ranging from "not at all" to "completely," participants were asked: "To what extent did you receive the right outcome based upon your understanding of the law?"

Because participants' responses to questions in each subcategory listed above were highly correlated with each other, we averaged participants' responses to questions in each subcategory to create scales that represent the relevant psychological construct. The next section analyzes the survey results based on those scales.

## VII. RESULTS OF THE NATIONAL SURVEY

To examine the relationship between the key issues of concern in

this study, we can first look at the correlation among the variables measured.<sup>77</sup> These correlations are shown in Table 1. First, they indicate that judgments about whether the courts obtain accuracy and whether they dispense substantive justice are unrelated.<sup>78</sup> The correlations further suggest that people associate using fair procedures with both producing more accurate verdicts<sup>79</sup> and as leading to more appropriate sentencing (i.e., substantive justice).<sup>80</sup>

We can also consider the relationship among different aspects of popular legitimacy. As shown in Table 2, consideration of their correlation indicates that legitimacy (as reflected in obligation and trust/confidence), lawfulness, and shared community values are interrelated views about the courts. In addition, those who would help by testifying are also more likely to say that they would not go outside the law to resolve individual or collective grievances. Finally, both behaviors are linked to attitudinal expressions of popular legitimacy.

To examine the basis of public support for the courts we first examine the influence of procedural justice, verdict accuracy, and sentence appropriateness upon legitimacy and behavioral support for the courts. The regression analysis examining that relationship is shown in Table 3.<sup>81</sup> It indicates that the primary judgment shaping popular legitimacy is the procedural justice of court actions. The second important factor is the accuracy of verdicts. The

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<sup>77</sup> A bivariate correlation represents the degree to which two items relate to each other. The correlation is represented by the "Pearson's *r*" statistic and ranges from -1 to +1. Correlations close to +1 and to -1 are stronger whereas correlations close to zero are weaker. Positive correlations indicate that an increase in one item is accompanied by an increase in the second item (for example, weight and height). Negative correlations indicate that an increase in one item is accompanied by a decrease in the second item. See LAWLESS ET AL., *supra* note 68, at 298–99.

<sup>78</sup> The correlation between these constructs was  $r = 0.02$ , which suggests that there is virtually no association between them.

<sup>79</sup>  $R = 0.31$ ,  $p < .001$ . A *p*-value is a statistic that determines the likelihood that the correlation observed is the result of chance. A correlation is "statistically significant" if the likelihood of seeing it by chance is 5% or less (as indicated by the *p*-value as  $p < 0.05$ ). See Jennifer K. Robbennolt, *Apologies and Legal Settlement: An Empirical Examination*, 102 MICH. L. REV. 460, 485 n.117 (2003).

<sup>80</sup>  $R = 0.07$ ,  $p < .01$ . We note that when the procedural justice of the courts is deconstructed into four elements of procedural justice—voice, neutrality, respect, and trust—the correlations suggest that those four elements are highly interrelated. While people have distinguished among the four aspects of procedural fairness that we have outlined, they generally view them as being very highly related. Hence, it is reasonable to view the fairness of the courts as a general judgment that combines the four elements of procedural justice.

<sup>81</sup> A linear regression analysis is a statistical technique used to evaluate the independent effects of multiple predictors, termed independent variables, on a measurable construct, termed a dependent variable. See, e.g., LAWLESS ET AL., *supra* note 68, at 300.

appropriateness of sentences, however, has a much smaller influence. The same is true of behaviors that are primarily shaped by procedural justice judgments, but in the case of legitimacy-related behaviors, accuracy and justice played a more equal secondary role.

Table 4 replicates the analysis of Table 3 but with a differentiated procedural justice model that includes the four elements of procedural justice: voice, neutrality, respect, and trust. Because these four elements are correlated, none will appear to have the strength of influence of a single indicator of procedural justice.<sup>82</sup> However, even within that framework, the results make clear that all four elements of procedural justice are distinctly important. Voice, neutrality, respect, and trust all shape court legitimacy, and are distinct from truth and substantive justice. Interestingly, voice directly impacts behavior, while trust shapes attitudes, and neutrality and respect influence both attitudes *and* behaviors.

Causal modeling can be used to answer the question of whether fair procedures shape legitimacy because people think they lead to accuracy and substantive justice.<sup>83</sup> The results of that modeling are shown in Figure 2, which tests the conceptual model shown in Figure 1.<sup>84</sup> The results suggest two conclusions. First, part of the influence of procedural justice on perceptions of legitimacy comes from the belief that fair procedures lead to more accurate verdicts. And, to a much lesser degree, following fair procedures is linked to the belief that using fair procedures leads to punishing appropriately. These influences are distinct.

Further, the results suggest that the primary influence of procedural justice on legitimacy is direct. In other words, the use of just procedures led to perceived legitimacy directly as well as through shaping either the likelihood of producing truth or the likelihood of achieving substantive justice.

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<sup>82</sup> This is because the explanatory power on the dependent variable is, in a sense, spread across the correlated point estimates instead of being concentrated in just one of them. For a more detailed explanation, see LAWLESS ET AL., *supra* note 68, at 326–27.

<sup>83</sup> Causal modeling, sometimes referred to as a path analysis, is a form of statistical regression that focuses on the causal relationship among several independent variables and an independent variable. For a detailed discussion, see Rueben M. Baron & David A. Kenny, *The Moderator-Mediator Variable Distinction in Social Psychological Research: Conceptual, Strategic, and Statistical Considerations*, 51 J. PERSONALITY & SOC. PSYCHOL. 1173, 1174 (1986).

<sup>84</sup> The coefficient values in the second model represent the effects of each variable on another variable.



### A. Sources of Legitimacy

*Demographics.* As seen in Table 5, respondent demographics have very little influence upon whether the courts are viewed as achieving truth. They have more influence upon whether the courts are viewed as achieving substantive justice. Higher education and liberalism are the primary factors that lead to saying that the courts do not achieve substantive justice. In the case of procedural justice having higher income, being better educated and being older leads people to say that the courts are procedurally fair, while minorities and liberals say they are not.

*Personal experience.* Only a small group of those interviewed—139 participants, which is 9% of the sample—had recent personal experience with the courts. Those respondents evaluated the procedural justice of their experiences and, as revealed in Table 6, their judgments were highly correlated. Among that subset of respondents the estimated accuracy of court verdicts and judgments about whether the courts generally obtain substantive justice are influenced by whether participants perceived judges as making fair decisions using fair procedures during their own personal experiences. Perceived court procedural justice was shaped by both whether judges make decisions justly and whether they treated the person fairly during their recent personal experience.

## VIII. DISCUSSION

Is the establishment of truth the same thing as the attainment of justice? The findings of this study suggest not. These two goals are distinct. As the summary model shown in Figure 2 suggests, truth does not influence perceptions of legitimacy by shaping judgments about just punishment. Rather, truth and substantive justice have parallel influences on perceptions of legitimacy, with truth having a stronger direct influence.

While both the extent to which the courts are perceived to determine truth and the frequency with which they achieve substantive justice shape popular legitimacy, neither is the primary factor shaping popular legitimacy. It is the perceived fairness of legal procedures that drives popular legitimacy, with people reacting both to whether they believe decisions are fairly made and whether they think that litigants are fairly treated. That influence occurs directly, rather than because people think fair procedures lead to accuracy or produce substantive justice.

A judicial authority can determine truth using legal procedures such as a trial. This study suggests that popular legitimacy is first based upon the view that the courts do establish truth. A judicial authority with expertise and experience can also establish a fair sentence.<sup>85</sup> Hence, having a third party authority facilitate a socially superior form of resolution—that is, just punishment—is less likely to create bad feelings and undermine long-term relationships. People are less likely to act upon self-serving motivations when a legitimate authority is telling them in a clear manner what a fair punishment is. Several findings support this argument from people who view the courts as legitimate when they justly punish.

The other key to success as a judicial authority, however, is relational: people are willing to defer to the solutions an authority proposes in part because the authority acts in ways that validate the parties by showing respect for their status and standing in the group, displaying concern for their views, and expressing a desire to do what is right for the people with whom they are dealing. Relational elements are distinct from the nature and quality of the decision itself and are a separate aspect of procedural justice related to the parties' social link with the authority.

This study first finds support for the direct relationship between procedural justice and legitimacy found in prior studies. It then demonstrates it is interpersonal treatment that is the key element of procedural justice, which shapes perceptions of legitimacy. In other words, while one benefit of fair judicial procedures is they lead to the goals of truth and substantive justice, it is the relational elements of procedures that are most central to public trust and confidence in the courts.

Interestingly, trust in the motives of judicial authorities is primarily linked to assessments of truth, which are the most important goal-based influence on legitimacy. When people evaluate whether or not they believe that the courts are able to determine the truth, it is the integrity of judges that is central, not the nature of the legal procedures they enact. People see truth as arising from the intentions and motives of judicial actors.

Of course, judicial procedures also involve decision-making and respondents viewed decision-making concerning punishment as linked to issues of voice and neutrality. If the courts allow

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<sup>85</sup> See THIBAUT & WALKER, *supra* note 21, at 117–18.

participants to have a voice in the proceedings and make decisions in rule-based, impartial ways, people believe the courts will enact substantive justice. However, this influence is secondary in importance.

### *A. Relational Perspectives on Judicial Authority*

The courts have the responsibility for articulating appropriate solutions to conflicts and just punishments for rule breaking. To be successful in their role, both individuals as judges and the courts as institutions need legitimacy. The findings reported here reflect the views of a sample of Americans about the general operation of the courts, their popular legitimacy, and the effect of personal experiences with the courts among a small segment of the population with recent personal experience with the courts. They suggest that there is an important role for relational mechanisms in creating and maintaining court legitimacy and encouraging supportive behavior toward the courts.

Discussions of regulation by the courts often quickly move toward a focus on sanctions. However, beyond the ability of legal authorities to compel obedience is their capacity to encourage voluntary deference and the willing acceptance of legal authority. One way the courts can encourage such acceptance is by being viewed by the public as legitimate. And as the results reported suggest, legitimacy is enhanced when people believe that the courts can establish the truth of the matter and can enact substantive justice. However, this is not the primary driver of legitimacy. Instead, that primary driver is a *direct* influence of the fairness of judicial procedures and, in particular, of the quality of the treatment that people experience when dealing with legal authorities.<sup>86</sup>

While the concept of procedural justice is abstract, the findings of this study suggest more specific details about the issues defining the interpersonal aspects of fairness to the public. In particular, people are concerned about whether they are treated with dignity, courtesy, and respect when dealing with legal authorities. This

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<sup>86</sup> Such findings are by no means confined to studies of legal authority. Tom Tyler, Avital Mentovich, and Sagarika Satyavada recently identified similar concerns in a study of why people accept doctors recommendations. See Tom Tyler et al., *What Motivates Adherence to Medical Recommendations? The Procedural Justice Approach to Gaining Deference in the Medical Arena*, REG. & GOVERNANCE (published online 2013), <http://goo.gl/lz1qAd>.

reflects both a concern for evidence of inclusion in the community, status within it, and respect for rights as a citizen. Such dignitary concerns are central to people's identity-based connection to legal authorities and institutions. In addition, people focus upon whether or not they have trust in the motives of legal authorities, believing that they are sincere, benevolent and caring. Those motives are manifested in taking the concerns of the people involved seriously, and trying to find solutions that address those concerns and recognizing their needs in the situation.

These results suggest the desirability of broadening the conception of judicial authority that is typical of discussions of judging today. In addition to concerns about communicating the ability to determine truth and achieve substantive justice, judges have a great deal to gain from focusing upon building relational bonds with the people who come before them in court, as well as with the public more generally. Building such bonds has many benefits, but the particularly relevant issue here is their ability to build legitimacy, and through it enhance the authority of the courts.

**Table 1. Judgments About the Courts**

	Accurate verdicts	Just sentences	Procedural justice	Decision making	Fairness of treatment
Achieve accurate verdicts	—				
Enact just sentences	0.04	—			
Act through procedural justice	0.31***	0.13***	—		
Make decision justly	0.27***	0.15***	0.95***	—	
Treat people fairly	0.32***	0.10***	0.98***	0.89***	—

Entries are the correlation among indicators. \*p< .05; \*\*p < .01; \*\*\*p < .001.

**Table 2. Legitimacy: Supportive Attitudes and Behaviors**

	Attitudes			Anticipated behaviors	
	Legitimate	Lawful	Share community values	Would help	Would not engage in violence
Legitimate	—				
Lawful	0.61***	—			
Share community values	0.63***	0.73***	—		
Would help the courts	0.19***	0.21***	0.20***	—	
Would not engage in violence	0.28***	0.25***	0.21***	0.22***	—

Entries are the correlation among indicators. \*p< .05; \*\*p < .01; \*\*\*p < .001.

**Table 3. Factors Shaping Court Related Attitudes and Behaviors**

	Attitudes				Behaviors		
	Courts legitimate	Courts lawful	Courts share community values	Total legitimacy	Would help	Would not use violence	Total behavior
Courts make decisions fairly	0.13**	0.28***	0.05	0.18***	0.17**	0.20***	0.23***
Courts treat people fairly	0.28***	0.29***	0.52***	0.42***	0.17**	0.01	0.11
Courts reach accurate verdicts	0.40***	0.12***	0.17***	0.24***	0.05	0.13***	0.05
Courts enact just punishments	0.06**	0.04	0.02	0.01	0.13***	0.08***	0.14***
Adjusted R-sq.	43%***	36%***	40%***	48%***	13%***	7%***	15%***

This table shows the results of an OLS regression in which the terms are all entered at the same time. The entries in each column are standardized regression coefficients. The final entry is the adjusted R-square for all the variables in the equation. \*p < .05; \*\*p < .01; \*\*\*p < .001.

**Table 4. The Importance of Different Aspects of Procedural Justice**

	Courts legitimate	Courts lawful	Courts share community values	Total attitudes	Would help	Would not use violence	Total behaviors
Voice	0.06	0.08*	0.01	0.06	0.08*	0.14***	0.07**
Neutrality	0.09	0.26***	0.06	0.16***	0.08	0.03	0.10*
Respect	0.17**	0.17**	0.25***	0.23***	0.17*	0.05	0.07
Trust	0.11*	0.07	0.26***	0.17***	0.02	0.02	0.01
Courts determine truth	0.40***	0.12***	0.17***	0.23***	0.05	0.13***	0.04
Courts achieve justice	0.05**	0.04	0.02	0.01	0.13***	0.08***	0.13***
	43%***	36%***	40%***	48%***	13%***	7%***	15%***

This table shows the results of an OLS regression in which the terms are all entered at the same time. The entries in each column are standardized regression coefficients. The final entry is the adjusted R-square for all the variables in the equation. \* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$ .

**Table 5. Demographic Influences on Judgments About the Courts**

	Courts determine truth	Courts achieve justice	Courts function using fair procedures
Hispanic	0.04	-.06*	-.01
African-American	0.03	0.03	-.08**
Age	-.10***	0.08**	0.18***
Education	-.09**	-.09***	0.08**
Income	0.03	0.08**	0.12***
Gender	-.05*	-.05*	0.03
Party	0.05	-.34***	-.06*
	2%***	13%***	8%***

This table shows the results of an OLS regression in which the terms are all entered at the same time. The entries in each column are standardized regression coefficients. The final entry is the adjusted R-square for all the variables in the equation. \*p < .05; \*\*p < .01; \*\*\*p < .001.

**Table 6. Judgments About Personal Experience with the Courts**

Procedural justice of decision making		
Fairness of treatment	0.79***	
Lawfulness of decision	0.83***	0.70***

Entries are the correlation among indicators. \*p < .05; \*\*p < .01; \*\*\*p < .001.



**Table 7. Influence of Personal Experience on Overall Judgments About the Courts.**

	Courts reach accurate verdicts	Courts enact appropriate sentences	Court act through procedural justice
<i>Judgments about what happened in past personal experiences</i>			
Procedural justice of decision making	0.34*	0.61***	0.30*
Procedural justice of quality of treatment	0.10	0.40**	0.29*
Lawfulness of court decisions	0.04	0.09	0.16
Adjusted R-square	13%***	10%***	47%***

This table shows the results of an OLS regression in which the terms are all entered at the same time. The entries in each column are standardized regression coefficients. The final entry is the adjusted R-square for all the variables in the equation. \* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$ .

Figure 1. Conceptual Model

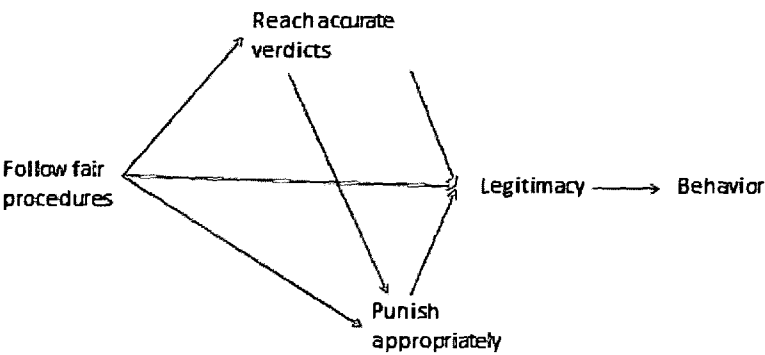


Figure1. Conceptual model.

Figure 2. Empirical Model

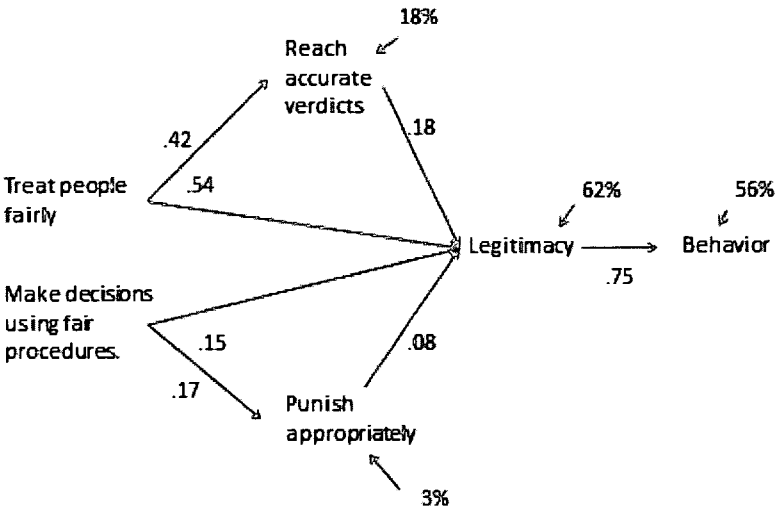


Figure2. Empiricalmodel

